UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

J.C., by and through his Guardian ad Litem Nandi Storm Cain and M.G., by and through her Guardian ad Litem Wendy Whittaker, Plaintiffs, v. City of Vallejo, a municipal corporation; and DOES 1-50, inclusive, individually and in their official capacity as police officers for the Vallejo Police Department, Defendants.	No. 2:24-cv-01879-JAM-AC **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS**

INTRODUCTION OF CASE / PROCEDURAL HISTORY

This case arises from an interaction between Plaintiffs J.C. and M.G. ("Plaintiffs") and City of Vallejo ("Defendant") police officers following a motor vehicle stop. Plaintiffs bring this case by and through their guardians ad litem, N.C. and W.D. respectively. Plaintiffs bring claims pursuant to 42 U.S.C. § 1983, California Civil Code § 52.1, and various tort law theories. Currently pending before this Court is Defendant's

Motion to Dismiss. See Mot., ECF No. 17. Plaintiffs submitted an opposition, Opp'n, ECF No. 23, and Defendant replied, Reply, ECF No. 26. For the reasons provided herein, the Court GRANTS in part Defendant's motion to dismiss.[1]

I. FACTUAL ALLEGATIONS

The following facts alleged by Plaintiffs are accepted as true for purposes of Defendant's Rule 12(b)(6) motion.

On July 2, 2023, Plaintiffs M.G. and J.C. were passengers in a vehicle driven by a friend of Plaintiff M.G.'s mother. See Compl. ¶ 15. City of Vallejo Police subsequently pulled the vehicle over and an officer ordered the driver out of the car. The driver exited the vehicle and was placed in handcuffs. Id. At the same time, Plaintiff M.G. had originally been seated behind the driver's seat and moved to sit in the driver's seat. See Compl. ¶ 17. Once in the driver's seat, Plaintiff M.G. began protesting and questioning the officers' level of force. Id. Then, officers yelled instructions at Plaintiff M.G. and one officer grabbed Plaintiff M.G. and violently pulled her out of the car through a crack in the car window. Id. Plaintiff M.G. then landed on the concrete floor with her face and chest first. Plaintiff J.C. witnessed these actions and was also needlessly detained. Id.; Compl. ¶ 1.

As a result of the incident, Plaintiff M.G. sought medical attention at Sutter Antioch where she received the diagnosis of

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for October 22, 2024. The Parties are advised that once the scheduling order is issued, the fictitiously-named defendants will be dismissed.

bruising. See Compl. ¶ 18.

II. OPINION

A. Legal Standard

A complaint must make a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007).

A Rule 12(b)(6) motion challenges the sufficiency of a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Under the plausibility pleading standard set forth in Twombly, 550 U.S. 544, 570 (2007), a plaintiff survives a motion to dismiss by alleging "enough facts to state a claim to relief that is plausible on its face." The complaint must contain sufficient "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). This "plausibility standard," however, "asks for more than a sheer possibility that a defendant has acted unlawfully," Iqbal, 556 U.S. 662, 678 (2009), and "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" Id. (quoting Twombly, 550 U.S. at 557).

At the Rule 12(b)(6) stage, the Court must accept all nonconclusory factual allegations of the complaint as true and construe those facts and the reasonable inferences that follow in the light most favorable to the Plaintiff. Id.; see also Knievel v. ESPN, 393 F.3d 1068, 1072 (9th Cir. 2005). However,

legally conclusory statements, not supported by actual factual allegations, need not be accepted. Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009). In the event dismissal is warranted, it is generally without prejudice, unless it is clear the complaint cannot be saved by any amendment. See Sparling v. Daou, 411 F.3d 1006, 1013 (9th Cir. 2005).

B. Judicial Notice

Along with their motion to dismiss, Defendant has requested that the Court take judicial notice of four exhibits that contain law enforcement records pertaining to Plaintiffs' July 2, 2023 incident. See ECF No. 17-1. The records at issue consist of one Vallejo Police Department crime report ("Exhibit A") and three MP4 audio/video recordings of body worn camera footage ("Exhibits B, C, and D"). Plaintiffs object to this request. See Opp'n, ECF No. 23-1.

Defendant heavily relies on Exhibits A, B, C, and D in its motion to dismiss and argues that the Court may take judicial notice of these records under Fed. R. of Evid. Rule 201(b), which provides courts discretion to take judicial notice of facts "not subject to reasonable dispute" and which are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Defendant cites Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1025 n. 2 (9th Cir. 2006), asserting that the exhibits it has provided in this case are public government records which can be properly considered.

The Court disagrees with Defendant's theory and justification for judicial notice. As discussed above, Fed. R.

Civ. P. 12(b)(6) and Ninth Circuit precedent are clear that when the legal sufficiency of a complaint's allegations are challenged by a motion under Rule 12(b)(6), "[r]eview is limited to the complaint." Cervantes v. City of San Diego, 5 F.3d 1273, 1274 (9th Cir. 1993). All factual allegations set forth in the complaint "are taken as true and construed in the light most favorable to [p]laintiffs." Epstein v. Washington Energy Co., 83 F.3d 1136, 1140 (9th Cir. 1996). As Plaintiffs correctly argue, the Court may not generally consider materials outside the pleadings at the motion to dismiss stage. See Objection at 2, ECF No. 17-1; Schneider v. Cal. Dep't of Corr., 151 F.3d 1194, 1197 n.1 (9th Cir. 1998); Jacobellis v. State Farm Fire & Cas. Co., 120 F.3d 171, 172 (9th Cir. 1997).

If "defendants are permitted to present their own version of the facts at the pleading stage — and district courts accept those facts as uncontroverted and true — it becomes near impossible for even the most aggrieved plaintiff to demonstrate a sufficiently 'plausible' claim for relief." Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 999 (9th Cir. 2018) (citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). Such undermining of the usual pleading burdens is not the purpose of judicial notice. Id. When "matters outside the pleading are presented to and not excluded by the court," the 12(b)(6) motion converts into a motion for summary judgment under Rule 56. See Kohja, 899 F.3d at 998.

Additionally, unlike the ordinances which were publicly accessible via the internet in Santa Monica Food Not Bombs, the Court does not find that a police report and body worn camera

footage are within the same category of readily available public government records discussed in that case. Instead, Defendant's records seek to contradict the allegations in Plaintiffs' Complaint and cannot be considered for their substance at this stage. While Defendant's exhibits may be considered during later stages of litigation, the Court finds that judicial notice of Defendant's exhibits is premature and declines to take judicial notice of the content of these exhibits for purposes of this motion. Thus, the Court determines that considering the police report and body worn camera footage is inappropriate at this stage. It follows that the Court has not relied on Defendant's exhibits or the arguments pertaining to them in deciding this motion.

C. Analysis

1. Fourth Amendment Seizure

Under Maryland v. Wilson, 519 U.S. 408, 410 (1997), police officers, as a matter of course, may order passengers of a lawfully stopped car to exit the vehicle. If officers possess a concern for their safety, they may also handcuff and move all occupants of the vehicle. See Rohde v. City of Roseburg, 137 F.3d 1142, 1144 (9th Cir. 1998) (citing Allen v. City of Los Angeles, 66 F.3d 1052, 1056-57 (9th Cir. 1995). Defendant also points out that officers may "despite the absence of probable cause or reasonable suspicion of criminal activity, order all occupants of the vehicle to step outside." Ruvalcaba v. City of Los Angeles, 64 F.3d 1323, 1327 (9th Cir. 1995).

In their Complaint, Plaintiffs do not set forth any allegations regarding the original stop and detention of the

driver. See Compl. They do not plead that the driver was stopped and arrested unlawfully. Nor do they allege that they did not know why they were being stopped or whether they fully complied with officers' instructions during the stop. Indeed, Plaintiffs provide mere conclusory statements that police officers seized passengers without probable cause and reasonable suspicion. See Compl. ¶ 30.

Because the constitutionality of a passenger's detention is predicated upon the initial stop of the driver, the Complaint has provided insufficient factual content to assert a viable Fourth Amendment unconstitutional seizure claim. With no information about the original circumstances surrounding the vehicle stop, there are not enough factual allegations in the Complaint to assert a Fourth Amendment violation. As such, the Court GRANTS Defendant's motion to dismiss on this claim with leave to amend.

2. Fourth Amendment Excessive Force

Plaintiff asserts an excessive force claim due to the manner she was extracted from the stopped vehicle. While Plaintiff does not identify the specific police officer who committed this action, it is plausible that at least one individual officer exercised unlawful force while effectuating Plaintiff M.G.'s arrest.

Plaintiff M.G. alleges that after she moved from the "rear driver's side" to the driver's seat and protested officers' actions, one officer grabbed Plaintiff M.G. and pulled her out of the car through a crack in the car window. See Compl. ¶ 17. This action caused Plaintiff M.G. to land on the floor and

receive bruising. Id. The Complaint also alleges that Plaintiff M.G. "posed no threat" to officers and that this use of force was unnecessary because she was "completely calm, cooperative, and unresisting during the incident." See Compl. ¶¶ 36-37. While Defendant disputes this depiction of the incident and argues that officers used reasonable force because M.G. was noncompliant, the Court cannot consider these arguments because they rely on exhibits outside of the Complaint. See Mot. at 14.

Under the Fourth Amendment, excessive force claims are assessed under a reasonableness test. See Graham v. Connor, 490 U.S. 386, 388 (1989). The reasonableness inquiry is an objective inquiry that asks "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Graham, 460 U.S. at 397. Because the Court must take the Complaint at face value and construe the facts in the light most favorable to the Plaintiffs, the Court determines that Plaintiffs have plausibly alleged that officers' level of force was unreasonable since M.G. was fully compliant and posed no threat. Thus, the Court DENIES Defendant's motion to dismiss Plaintiff's Fourth Amendment excessive force claim.

3. First Amendment Retaliation

Plaintiff M.G. alleges that officers used excessive force against Plaintiff in retaliation for protesting police action. See Compl. ¶¶ 43-46. However, Plaintiff M.G.'s allegations are insufficient to state a claim because according to the Complaint, she was not engaged in protected speech activity

prior to the police encounter.

To state a First Amendment retaliation claim, a plaintiff must plausibly allege that she "(1) was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the defendant's conduct." Capp v. Cnty. of San Diego, 940 F.3d 1046, 1053 (9th Cir. 2019) (cleaned up). As Defendant argues, Plaintiff M.G.'s retaliation claim is conclusory and she does not plead all of the required elements.

The Complaint alleges that after officers pulled the vehicle over and arrested the driver, M.G. protested the "level of force" used by officers. See Compl. ¶ 17. Thus, Plaintiff M.G.'s "protest" occurred in the context of an already effectuated vehicle seizure. Contrary to what Plaintiff alleges, resisting police actions during a lawful stop is not protest within the meaning protected by the First Amendment. Unlike the Plaintiff in Duran v. City of Douglas, 904 F.2d 1372, 1378 (9th Cir. 1990), M.G. was not engaged in protected free speech activity prior to being detained – her resistance occurred after the vehicle had already been stopped. Given that Plaintiff's speech occurred during a police seizure, the Court does not find that she was engaged in protected activity and GRANTS Defendant's motion to dismiss on this claim.

4. Denial of Medical Care

Plaintiff M.G. also pleads a denial of medical care claim under the Fourth Amendment. See Compl. at 10. The Fourth

Amendment requires law enforcement officers to provide objectively reasonable post-arrest care. Mejia v. City of San Bernardino, 2012 WL 1079341, at *5 n. 12 (citing Tatum v. City & County of San Francisco, 441 F.3d at 1099). "This means that officers must 'seek the necessary medical attention for a detainee when he or she has been injured while being apprehended by either promptly summoning the necessary medical help or by taking the injured detainee to a hospital.'" Id. (quoting Maddox v. City of Los Angeles, 792 F.2d 1408, 1415 (9th Cir. 1986)).

Under the facts alleged in the Complaint, this claim is factually and legally deficient. Plaintiff does not allege that she requested medical care or that she suffered any injuries necessitating medical treatment. The Complaint provides merely that Plaintiff received a later diagnosis of "bruising." Compl. ¶ 18. Bruising is not the typical care that requires medical attention and it is objectively reasonable for officers to not have summoned medical help for a minor injury. Based on the allegations in the Complaint, Plaintiffs has not plausibly asserted a denial of medical care claim under the Fourth Amendment's reasonableness standard and Defendant's motion to dismiss this cause of action is GRANTED.

5. Monell Liability

Plaintiffs also raise a Monell claim in their Complaint. Defendant argues that Plaintiffs' Monell claim fails because Plaintiffs do not allege with any particularity the specific City policies or practices claimed to support liability and instead takes a "kitchen-sink approach" that provides conclusory

restatements of the law. See MTD at 17. The Court agrees.

Defendant cites to AE ex rel. Hernandez v. County of Tulare, 666 F.3d 631, 637 (9th Cir. 2012), which holds that the Starr standard requiring "sufficient allegations of underlying facts" applies to pleading policy or custom for claims against municipal entities. See Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). Under the Starr standard, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation. Id.

Plaintiffs' Complaint does not meet the Starr standard because it consists of only vague and conclusory statements. See Compl. at ¶¶ 56-60. Although Plaintiffs allege that "[o]n information and belief, [officers] were not disciplined for their use of excessive force," Plaintiffs do not allege that they ever filed complaints with the City of Vallejo's Police Department or sought any other administrative remedies. Plaintiffs also allege, without any particularity, that the City "ha[s] and maintain[s] an unconstitutional policy, custom, and practice of arresting individuals without probable cause or reasonable suspicion, and using excessive force, which also is demonstrated by inadequate training." Compl. at ¶ 56. It is not apparent from the Complaint what this specific policy is.

Plaintiffs also provide only conclusory statements about the City's liability, alleging that the City "inadequately supervis[es]" officers, maintains "grossly inadequate procedures for reporting, supervising, investigating, reviewing, disciplining, and controlling" officers, and "fail[s] to discipline" officers. Compl. at ¶ 56. These statements are insufficient to plausibly allege that Defendant has acted unlawfully and are simply bare restatements of the law.

After Iqbal, allegations of Monell liability are sufficient for purposes of Rule 12(b)(6) only where they: (1) identify the challenged policy/custom; (2) explain how the policy/custom is deficient; (3) explain how the policy/custom caused the plaintiff harm; and (4) reflect how the policy/custom amounted to deliberate indifference, i.e., show how the deficiency involved was obvious and the constitutional injury was likely to occur. See Herd v. Cnty. of San Bernardino, 311 F. Supp. 3d 1157, 1166-67 (C.D. Cal. 2018) (citing Young v. City of Visalia, 687 F.Supp.2d 1141, 1163 (E.D. Cal. 2009)); see also Harvey v. City of S. Lake Tahoe, No. CIV S-10-1653 KJM EFB PS, 2011 WL 3501687, *3 (E.D. Cal. Aug. 9, 2011). Plaintiffs' Complaint does not fulfill any of these four metrics: the allegations do not specify what the City policy is, how the City policy is deficient, or how the training and hiring practices caused Plaintiffs' constitutional injury. Additionally, Plaintiffs' opposition is devoid of factual reasoning because it merely lists other cases against the City of Vallejo that contain materially dissimilar facts and are not relevant to the incident at issue. See Opp'n at 6-13.

Iqbal has made clear that conclusory, "threadbare" allegations that merely recite the elements of a cause of action will not survive a motion to dismiss. See Iqbal, 129 S.Ct. at 1949-50. Thus, without more, Plaintiffs' Monell claim does not survive Defendant's Rule 12(b)(6) motion and must be dismissed.

6. Bane Act California Civil Code Section 52.1

Plaintiffs assert a state cause of action under the Bane Act. "The Bane Act civilly protects individuals from conduct aimed at interfering with rights that are secured by federal or state law, where the interference is carried out by threats, intimidation or coercion." Reese v. Cty. of Sacramento, 888 F.3d 1030, 1040 (9th Cir. 2018) (citation and internal quotation marks omitted). The essence of a Bane Act claim is that the defendant, by improper means, "tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law." Austin B. v. Escondido Union Sch. Dist., 149 Cal. App. 4th 860, 883, 57 Cal.Rptr.3d 454 (2007).

Defendant correctly contends that the Bane Act requires defendants act with "specific intent" to deprive plaintiffs of their constitutional rights and cite to Reese v. Cnty. of Sacramento, 888 F.3d 1030, 1043 (9th Cir. 2018) (discussing Cornell v. City and Cnty. of San Francisco, 17 Cal.App.5th 766 (2017)). See Reply at 9. While the Ninth Circuit recognized in Reese that "the elements of the excessive force claim under § 52.1 are the same as under § 1983," [the Ninth Circuit] did not read those cases as contradicting the intent requirement"

previously established by California state courts. 888 F.3d at 1044 (citation and internal quotation marks omitted). While Plaintiff M.G. has sufficiently plead a Fourth Amendment excessive force violation, she has not sufficiently alleged that officers possessed specific intent to interfere with her rights as required under the Bane Act. See Compl. ¶ 62.

Because the Ninth Circuit has instructed that jurors must find that the defendants "intended not only the force, but its unreasonableness, its character as 'more than necessary under the circumstances'" to prevail on a Bane Act claim predicated on excessive force, Reese v. Cnty. of Sacramento, 888 F.3d 1030, 1045 (9th Cir. 2018), the Court finds that allegations about underlying intent are necessary to properly assert a Bane Act cause of action. Thus, Plaintiffs have failed to plead all elements of the Bane Act and Defendant's motion to dismiss this claim is GRANTED.

7. Tort Causes of Action

Plaintiffs plead a series of tort allegations including assault/battery, intentional infliction of emotional distress, negligence, and negligent infliction of emotional distress. Plaintiffs also allege a false arrest/false imprisonment claim. Defendant asserts that Plaintiffs have failed to sufficiently plead these claims. See Mot. at 18-19. The Court finds that Plaintiffs have not sufficiently plead the elements for the alleged tort actions because the claims lack specificity as to who the tortfeasors are and what specific duties are owed.

Presently, Plaintiffs group the fictitiously-named police officers and municipal entity together and then conclude that

tort liability exists. However, group pleading does not provide defendants fair notice of the claims against them under Fed. R. Civ. P. 8. See Gen-Probe, Inc. v. Amoco Corp., Inc., 926 F. Supp. 948, 960-62 (S.D. Cal. 1996); see also, Smith v. City of Marina, 709 F. Supp.3d 926, 937-38 9 (N.D. Cal. 2024) (dismissing tort claims in a § 1983 action for lack of specificity and disaggregation). Accordingly, these tort claims are dismissed and Defendant's motion is GRANTED because Plaintiffs fail to specify particular defendant officers or identify the duties owed and breaching conduct for each individual defendant.

As for Plaintiffs' false arrest/false imprisonment claim, this claim stands on the same footing as the federal Fourth Amendment seizure claim and Plaintiffs have failed to allege sufficient facts establishing an unreasonable arrest. Thus, Defendant's motion to dismiss is GRANTED on this claim as well.

8. Leave to Amend

Plaintiffs have requested leave to amend. See Opp'n at 17. A court granting a motion to dismiss a claim must decide whether to grant leave to amend. Leave to amend should be "freely given" where there is no "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of [the] amendment . . . ." Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to be considered when deciding whether to grant leave to amend). Because Plaintiffs may cure the defects in their Complaint by

adding more specificity and identifying which officers were involved in the incident, the Court grants Plaintiffs leave to amend.

III. ORDER

For the reasons set forth above, the Court GRANTS Defendant's Motion to Dismiss as to the Fourth Amendment seizure claim (First Cause of Action), First Amendment retaliation claim (Third Cause of Action), Fourth Amendment denial of medical care claim (Fourth Cause of Action), Monell liability claim (Fifth Cause of Action), Bane Act claim (Sixth Cause of Action), the tort liability claims (Seventh through Tenth Causes of Action), and the false imprisonment claim (Eleventh Cause of Action) with leave to amend. The Court DENIES Defendant's Motion to dismiss as to the Fourth Amendment excessive force claim (Second Cause of Action).

Plaintiffs shall file their Amended Complaint no later than twenty (20) days from the date of this Order. Defendant shall file its responsive pleading to the Amended Complaint no later than twenty (20) days thereafter.

IT IS SO ORDERED.

Dated: December 16, 2024

JOHN A. MENDEZ,
SENIOR UNITED STATES DISTRICT JUDGE